

**REMARKS**

Entry of the foregoing, reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

**I. Amendments to the Claims**

By the foregoing amendment, claim 12 has been amended to recite, *inter alia*, that the fusion protein comprises SEQ ID NO 1. Support for this amendment can be found in Example 8, page 9 section [0087] to page 10, section [0088] of the description. Claim 53 is cancelled to avoid duplication of subject matter.

The amendments to the claims, including cancellation of claims, have been made without prejudice or disclaimer to any subject matter recited or canceled herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments of the above-identified application is respectfully requested.

**II. Response to Claim Rejection Under 35 U.S.C. § 103(a)**

A. The Examiner has maintained the rejection of claims 12-17, 20, 22-29, 39-46, and 54-55 under 35 U.S.C. § 103(a) as purportedly unpatentable over Erbs et al. (International Publication No. WO 99/54481) ("Erbs") in view of Kern et al. (Gene, 1990, pp. 149-157) ("Kern"). *See* OFFICE ACTION at 3-8. The rejection is respectfully traversed.

Claim 12 (from which the remaining examined claims depend either directly or indirectly) has been amended to recite, *inter alia*, that the fusion protein comprises SEQ ID NO 1, *i.e.*, that the fusion protein comprises FCU1-8. As seen in Example 8, the claimed fusion protein desirably lacked UPRTase activity as compared FCU-1, while desirably retaining CDase activity which is found in FCU-1.

As seen in Figure 1 and described in Example 9, the claimed fusion protein exhibited superior and unexpected results over a protein comprising FCU-1, namely better control of tumor size.

It is respectfully submitted that one of ordinary skill in the art would have no reason to combine the cited references and arrive at the claimed subject matter.

**B.** The Examiner has maintained the rejection of claim 21 under 35 U.S.C. § 103(a) as purportedly unpatentable over Erbs in view of Kern, and further in view of Faure et al. (European Publication No. 0206920) ("Faure"). *See* OFFICE ACTION at 9. The rejection is respectfully traversed.

It is respectfully submitted that Faure et al. fails to cure the above-noted deficiencies of Erbs and Kern, so that claim 21 is patentable for the above reasons.

**C.** The Examiner has maintained the rejection of claims 18 and 19 under 35 U.S.C. § 103(a) as purportedly unpatentable over Erbs et al. (International Publication No. WO 99/54481) in view of Kern et al. (Gene, 1990, pp. 149-157), and further in view of Sutter et al. (FEBS Letters, 1995, pp. 9-12) ("Sutter") and Carol (Vaccine, 1997, pp. 387-394) ("Carol"). *See* OFFICE ACTION at 10-12. The rejection is respectfully traversed.

It is respectfully submitted that Sutter and Carol fail to cure the above-noted deficiencies of Erbs and Kern, so that claims 18 and 19 are patentable for the above reasons.

### **CONCLUSION**

From the foregoing, further and favorable action in the form of a Notice of Allowance is respectfully requested and such action is earnestly solicited.

In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully requested to telephone the undersigned so that prosecution of the application may be expedited.

Respectfully submitted,

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